THE FRANKLIN PARTNERSHIP, LLP
YOUR KEY TO WASHINGTON

MEMORANDUM

To: **Clients & Interested Parties**

From: **The Franklin Partnership**

Date: **December 14, 2018**

RE: ***December Tax Policy Developments***

While most of the focus is on tariffs and trade these days, below please find a quick update on the latest with taxes, as we have seen several important policy developments this month.

House Republicans' Hope for Technical Tax Corrections Bill Fades
The top U.S. House of Representatives GOP tax writer on December 10 released a revised bill (https://waysandmeans.house.gov/urgent-disaster-relief-leads-tweaked-year-end-tax-relief-package) correcting a number of technical errors made in the Tax Cuts and Jobs Act (TCJA) signed into law in late 2017. After the previous version (https://policy.house.gov/legislative/bills/house-amendment-senate-amendment-hr-88-retirement-savings-and-other-tax-relief-act) released around Thanksgiving failed to garner enough support for passage in part due to GOP absentees and its broad reach to extend a number of expired or expiring tax incentives, House GOP lawmakers sought to generate more support by removing many of the "tax extenders" provisions, though they did retain a number of controversial tax-related items included in the Affordable Care Act. However, sources indicate that the House GOP may still lack the votes to pass the tax technical corrections bill as the measure would require sixty Senate votes and Democrats in the upper chamber expressed little interest in passing a bill in which they had no input. In addition, with the current Congress set to end next Friday, December 21, a number of House Republicans defeated in the November elections have already left Washington with no intention of returning next weeks for votes. Some on Capitol Hill believe roughly twenty House Republicans may miss votes next week, meaning barring the unlikely event Democrats support a GOP tax bill, the technical corrections to TCJA and extenders will likely wait until the next Congress convenes in 2019. While there is still a slim chance a tax technical corrections bill could pass as many had hoped this December, the initial overreach by House GOP drafters, exclusion of Senate Democrats, and limited legislative days may push fixing even non-controversial tax items into 2019.

Sources Indicate to Expect Opportunity Zones Round 2 Regulations in Spring
Sources in Washington indicate the Treasury Department will issue a second round of regulations on "Opportunity Zones," intended to spur private investment in underserved communities. Officials indicated they intended the first Notice of Proposed Rule Making (NPRM), open for public comment through December 28, 2018, to help get the program up and running with the second round intended to address any challenges or concerns in the initiative's early stages. This is an increasingly common action in Washington, where Federal Agencies issue an NPRM that effectively serves as an Interim Final Rule as they make tweaks and technical corrections based on feedback from the program's early months.

The new Tax Cuts and Jobs Act signed into law in December 2017, created a new section, 1400Z-2 of the Internal Revenue Code, relating to gains an investor may defer if they invest in a qualified opportunity fund (Opportunity Zones). The first round of regulations proposed to address the type of gains investors may defer and their deferral duration, among other provisions.

444 N. Capitol St., NW, Suite 605 Washington, DC 20001 Phone: (202) 393-8250 Fax: (866) 876-9163
www.franklinpartnership.com

Despite the administration moving forward with Opportunity Zones, the initiative is under current scrutiny as media reports indicate the President's daughter and son-in-law may be personally benefiting financially from certain investments in Opportunity Zones. In addition, some on the right believe Opportunity Zones will lead to investors shifting their investments to less worthy or important projects if they receive a better return due to the tax incentives.

Qualified Business Income Rules Expected Soon
This December, the Internal Revenue Service (IRS) is scheduled to release final regulations regarding "computational, definitional, and anti-avoidance guidance" under the new Section 199A. The deduction, included in the Tax Cuts and Jobs Act (TCJA), allows pass-throughs to deduct up to 20% of their "qualified business income." Sources indicate the IRS sent to the White House for review a final rule for guidance under Section 199A and also sent for consideration a proposed rule for Regulated Investment Companies (RIC) and Real Estate Investment Trust companies (REITS). Most Federal Agencies must send proposed regulatory action to the White House for approval before issuing to the public. While some rules can take months to clear the White House, sources indicate relative quick action on these tax items.

In August 2018, the IRS issued proposed regulations, which this action finalizes, to clarify the computation of the income threshold for the taxpayer and the deduction amounts. The regulations also define terms used in the new Section 199A such as "aggregated trade or business" and "qualified business income."

December Release Possible for Transition Tax Rule
The Internal Revenue Service (IRS) is set to issue in December the final regulations related to the transition tax under Section 965 Congress enacted as part of the Tax Cuts and Jobs Act (TCJA). Section 965 levies a one-time transition tax on untaxed foreign earnings of corporations owned by U.S. shareholders since 1986 by deeming the earnings repatriated. The regulations, which were first proposed in August, will provide details on how to calculate and report a U.S. shareholders "section 965a inclusion amount." Many manufacturers in particular report unexpected exposure due to the transition tax in the event they sell their overseas company in the coming years, transition to a C-corporation, or take other action that will create a liability for any deferred earnings left overseas and not distributed in the U.S.

IRS Issues Multinational Minimum Tax Base Erosion Rule
On December 13, 2018, the U.S. Internal Revenue Service (IRS) proposed regulations to implement the base erosion and anti-abuse tax (BEAT). The minimum tax for multinational companies was included in the 2017 Tax Cuts and Jobs Act. The new provision will primarily affect corporate taxpayers with substantial gross receipts who make deductible payments to foreign related parties.

The proposed regulations provide guidance on the new tax code section 59A, including determining what is a base erosion payment, how to calculate the base erosion minimum tax amount and the required base erosion and anti-abuse tax resulting from that calculation. The IRS is accepting public comments on the proposed regulations for 60 days after they are officially published in the Federal Register.

Second Global Income Tax (GILTI) Rule Issued
On December 7, 2018, the IRS issued its second proposed regulations covering a company's Global Intangible Low Taxed income rule, in a further attempt for the U.S. Government to capture income earned overseas. Trade associations and multiple companies are expressing concern that the new GILTI will call on businesses to allocate half of some domestic expenses to foreign subsidiaries. Manufacturers and multinational corporations had hoped the IRS would not require any allocation of expenses.

Lawmakers targeted foreign subsidiaries in countries with lower than 13.5% rate when initially drafting legislation signed into law in December 2017; however, covered businesses are now likely subject to a broader tax liability than initially expected when Congress negotiated the tax law. The IRS is seeking public comment through February 5, 2019, on the latest GILTI rules.